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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 CISCO SYSTEMS, INC.,

14 Plaintiff,

15 v.

16 ARISTA NETWORKS, INC.,

17 Defendant.

Case No. 3-14-CV-05344-BLF

**DEFENDANT ARISTA NETWORKS,
INC.'S ADMINISTRATIVE MOTION TO
SHORTEN TIME ON BRIEFING AND
HEARING SCHEDULE FOR ARISTA'S
MOTION TO COMPEL
INTERROGATORY RESPONSES**

Judge: Honorable Paul Grewal

Date Filed: December 5, 2014

Pursuant to the Northern District of California’s Civil Local Rules 6-1(b), 6-3(a), and 7-11, Defendant Arista Networks, Inc. (“Arista”), respectfully submits this administrative motion to shorten the briefing and hearing schedule for Arista’s Motion to Compel Interrogatory Responses (“Motion to Compel”), which Arista filed on September 17, 2015. Dkt. No. 66. The hearing on the Motion to Compel is currently set for October 27, 2015.

For the reasons stated herein, Arista asks the Court to decide its Motion to Compel¹ on the following briefing schedule:

- Arista’s Motion to Compel was filed on Thursday, September 17, 2015;
- Plaintiff Cisco Systems, Inc.’s (“Cisco”) Opposition will be filed no later than Thursday, September 24, 2015;
- Arista’s Reply will be filed no later than 12:00 p.m. on Monday, September 28, 2015; and
- Hearing as soon thereafter as the Court’s calendar permits, including as soon as Tuesday, September 29, 2015.

ARGUMENT

Arista filed a Motion to Compel on September 17, 2015, asking the Court to compel complete responses to Arista’s Interrogatories 5 and 16. Dkt. No. 66. As explained in detail in Arista’s Motion to Compel, Interrogatories 5 and 16 seek basic information about the command line interface (“CLI”) commands, hierarchies, modes, and prompts that Cisco alleges Arista has copied, and over which Cisco has asserted copyright ownership and protection. Critically, Cisco’s copyright claim alleges copying of—among other things—*over 500 discrete commands*, which, according to Cisco, were developed by numerous different authors over more than a decade. There is no question that Arista is entitled to complete, substantive responses to these discovery requests, which ask Cisco to explain the derivation for each of the asserted CLI commands that *Cisco contends* was copied, and to provide fundamental bibliographic information

¹ Pursuant to Local Rule 37-1(a), Arista certifies that, by and through its counsel, it has made a good faith effort to confer with Cisco regarding both its Motion to Compel and this Motion to Shorten Time.

1 about those CLI commands, hierarchies, modes and prompts such as who is the author, when it was
 2 created, when and where it was first published, and the Cisco product in which it was first used or
 3 implemented.

4 To date, Arista has been exceedingly patient. Arista propounded the first of these two
 5 related requests—Interrogatory 5—on May 14, 2015, and has been raising the incompleteness of
 6 Cisco’s response since early July. Declaration of Elizabeth K. McCloskey (“McCloskey Decl.”),
 7 ¶ 2. Arista then served Interrogatory 16 on July 24, to avoid any effort by Cisco to narrowly
 8 interpret Interrogatory 5. *Id.* Arista has met and conferred with Cisco regarding Interrogatories 5
 9 and 16 on *six separate occasions*, including two separate instances where Arista held off on filing
 10 a motion to compel in light of Cisco’s promise to supplement its interrogatory response. *Id.*
 11 Nonetheless, after more than ten weeks and two supplemental responses, Cisco still refuses to
 12 provide complete and direct responses to these two discovery requests, and instead, wants to
 13 further meet and confer. *See id.* ¶¶ 4–5.

14 It is astounding that ten months into this litigation, Cisco still has not provided Arista with
 15 the most basic bibliographic information about its own copyright allegations—information that is
 16 in the exclusive possession of Cisco. Cisco’s failure to comply with its discovery obligations is
 17 all the more inexcusable because Cisco requested—and received—an early trial date and an
 18 aggressive trial schedule by representing to the Court that discovery for the copyright claim could
 19 proceed very quickly. *See* Dkts. Nos. 43, 51. Fact discovery closes February 26, 2016 for an
 20 August 1, 2016 trial. Dkt. No. 51. Cisco has now stonewalled for half of the fact discovery
 21 period; Arista cannot allow these tactics to continue, particularly given the large number of
 22 asserted copyright works, the 500-plus disputed CLI commands and other material Cisco alleges
 23 were copied, and the amount of party and third-party discovery that will need to be taken once Cisco
 24 provides the basic bibliographic information requested by Interrogatories 5 and 16.

25 Arista respectfully submits this administrative motion to shorten time precisely because of
 26 the aggressive case schedule that Cisco demanded. The discovery sought in Interrogatories 5 and
 27 16 is critical to Arista’s defenses because, among other things, one of the touchstones of
 28 copyright protection—originality—is in serious dispute. For example, as discussed in Arista’s

1 Motion to Compel, many of the asserted CLI commands simply implement protocols specified in
 2 industry standards, and use the same customary words and phrases used in those industry
 3 standards. Arista needs discovery into the authorship and creation of the CLI commands to
 4 determine whether the author(s) merely used terms that were already being used by the industry,
 5 and test whether any of the asserted CLI commands are truly original and eligible for copyright
 6 protection. The information requested by Interrogatories 5 and 16 is therefore foundational to
 7 further discovery efforts. It will identify persons whom Arista will likely need to depose to learn
 8 how each asserted CLI command, hierarchy, mode, and prompt came about, when it was
 9 “created” at Cisco (if it was at all), and when and how it was used. Because this discovery is a
 10 gateway to substantial additional discovery (including third party discovery of individuals who
 11 may no longer be employed by Cisco), and Cisco—as the purported copyright holder—has sole
 12 possession of the requested information, Arista is left with no choice but to file this administrative
 13 motion to shorten time on its Motion to Compel.

14 Arista met and conferred with Cisco prior to filing this administrative motion. McCloskey
 15 Decl., ¶¶ 4–5. Cisco opposes this motion because it believes that Arista should have met and
 16 conferred further on the motion to compel. In light of the delay that Cisco has caused to date,
 17 expedited briefing is warranted. Accordingly, Arista requests that the Court adopt the briefing
 18 and hearing schedule as set forth in the Proposed Order filed concurrently herewith.

19 Respectfully submitted,

20 Dated: September 18, 2015

KEKER & VAN NEST LLP

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 22 By: /s/ Brian L. Ferrall
 BRIAN L. FERRALL

23 Attorneys for Defendant ARISTA
 24 NETWORKS, INC.